IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

MONDAY, THE 17TH SEPTEMBER 2007 / 26TH BHADRA 1929

Bail Appl..No. 5510 of 2007()

CRIME NO.237/06 OF PAYANGADI POLICE STATION

PETITIONERS/ACCUSED

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1. PUTHALATH BHSKARA PODUCAL,.
   S/O.MEENAKSHI AMMA,KADANNAPPALLI AMSOM,
   CHERUVACHERRY DESOM,KANNUR DISTRICT.

2. K.SHOBHA,D/O. P.BHASKARA PODUCAL,
   KADANNAPPALLI AMSOM,
   CHERUVACHERRY DESOM,PO MATHAMANGALAM,
   KANNUR DISTRICT.

BY ADV. SRI.M.V.AMARESAN

RESPONDENTS: COMPLAINANT

STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI. S.U. NAZAR

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 17/09/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

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B.A.No. 5510 of 2007

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Dated this the 17th day of September, 2007

O R D E R

Application for anticipatory bail. The petitioners face allegations, inter alia, under Section 468 I.P.C. The crux of the allegations against them is that the first petitioner has forged a Deed of Power of Attorney allegedly executed by his dumb brother. Claiming to be the attorney of his brother, on the strength of that instrument of Power of Attorney the first petitioner had executed a document assigning the property of his brother to the name of his two children. Another brother complained that the Power of Attorney is not genuine. Crime has been registered. Investigation is in progress. The petitioners apprehend imminent arrest.

2. The learned Prosecutor points out that in the course of the investigation the crucial document was examined by the expert and the expert has reported that the deaf and dumb brother had not affixed the thumb impression in the document in question.

3. The learned counsel for the petitioners submits that the petitioners are absolutely innocent. The petitioners assert that the

document is genuine. It is purely a private family dispute. False allegations are raised by the brother of the first petitioner, the defacto complainant. In these circumstances the petitioners may be granted anticipatory bail, it is submitted.

4. The application is opposed. The learned Prosecutor submits that the available indications convincingly point to the complicity of the petitioners. They are not entitled for the invocation of the extra ordinary equitable discretion under Section 438 Cr.P.C. The petitioners may be directed to resort to the ordinary and normal procedure of appearing before the Investigating Officer or the learned Magistrate having jurisdiction and then seek regular bail in the ordinary course.

5. Having considered all the relevant inputs, I am satisfied that there are no features which can justify or warrant the invocation of the extra ordinary equitable discretion under Section 438 Cr.P.C. This I am satisfied is a fit case where the petitioners must resort to the ordinary and normal procedure of appearing before the the learned Magistrate having jurisdiction and then seek regular bail in the ordinary course.

5. This application is accordingly dismissed. Needless to say, if the petitioners appear before the Investigating Officer or the learned

Magistrate having jurisdiction and apply for bail after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass orders on merits, in accordance with law and expeditiously.

(R. BASANT)
Judge

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